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October 25, 2004

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 22210

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2004 NOV - 3 A 4 38

Re: MUR 5541

Dear Mr. Jordan:

Bush-Cheney '04, Inc., David Herndon, Treasurer ("BC '04") and Ken Mehlman (collectively "respondents") have received the complaint designated as MUR 5541.

The complainant alleges in Count II that respondents have engaged or are about to engage in impermissible coordination of public communications with "The November Group." This is untrue.

Complainant makes numerous allegations unsupported by any evidence whatsoever to argue that respondents violated the coordination regulations. First, the complainant has presented no evidence that any public communication has actually occurred or is about to occur – other than mentions in news articles from several months ago. Second, there is no evidence presented of any content of any public communication whatsoever – other than mentions in news articles from several months ago. Respondents are not aware of any public communication meeting the content standard test aired by the November fund.

Third, there is no evidence that the conduct prong of the coordination regulations have been met. The complainant cites one news article indicating that Ken Mehlman spoke at a meeting of the Chamber of Commerce more than 6 months ago – and the only comment reported to have been made by him is that Democrat 527s are set up to spend non-federal money to influence the presidential election. Further, complainant attempts to imply that because three people identified in the complaint as leaders of the November Group are former Republican officials. This has no bearing on coordination whatsoever. The key to this prong of the coordination test is some evidence of conduct:

Respondents did not request or suggest the creation, production or distribution of any communication by the November Group. 11 C.F.R. 109.21(d)(1). Further, respondents did not have any material involvement (or have any involvement at all) in any decisions

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related to the actions of the November Group. 11 C.F.R. § 109.21(d)(2). Respondents did not engage in substantial discussions with the November Group about any advertisement. 11 C.F.R. § 109.21(d)(3). No suggestion or allegation has been made that 11 C.F.R. § 109.21(d)(4), (5), or (6) have been violated and respondents are not aware of any information that would lead to a conclusion that these provisions have been violated.

As a result, the Commission should find no reason to believe and dismiss the complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Josefiak', written over the printed name.

Thomas Josefiak  
General Counsel

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